S.B. CIVIL WRIT PETITION NO. 2639/2006.

UMRAO SINGH BULIYA
VS.
STATE OF RAJASTHAN & ORS.

DATE OF ORDER : 05.09.2007.

HON'BLE MR. GOVIND MATHUR, J.

Mr. Sudheer Sharma for the petitioner.
Mr. B.L. Tiwari, Dy. Government Advocate.
Mr. Rajesh Joshi for the respondents.

By this petition for writ, a challenge is given by the petitioner to the order dated 09.03.2006 passed by learned Additional District Judge No.2, Bhilwara in Appeal No.37/2005 affirming the order dated 16.07.2005 passed by Estate Officer, Municipal Board, Shahpura.

The contentions of counsel for the petitioner, while assailing validity of the order impugned, are:

1. The Estate Officer erred by directing the petitioner to vacate the premises in question without affording adequate opportunity of hearing to the petitioner.

2. Shri Pantjali Sharma, Additional District Judge No.2, Bhilwara was not competent to adjudicate and decide the appeal under Section 9 of the Rajasthan Public Premises (Eviction of Unauthorized Occupants) Act, 1964 being not having experience of 10 years as District Judge.

I do not find any substance in the first contention raised by counsel for the petitioner in view of the fact that before passing an order as per Section 9 of the Act of 1964, a notice was issued to the petitioner and in pursuant thereto he also submitted a reply, copy whereof is already available on record as Annexure 15. The appellate court also considered this issue and gave a specific finding that adequate opportunity of hearing was given to the petitioner.

The next contention of counsel for the petitioner is that Shri Pantjali Sharma, Additional District Judge No.2, Bhilwara was not comptent to adjudicate and decide an appeal in view of provisions of Section 9 of the Act of 1964 that prescribe for adjudication of an appeal by a District Judge or a Judicial Officer equivalent to the rank of District Judge with 10 years experience.

I do not consider it appropriate to enter into the controversy as to whether the Additional District Judge having experience less than 10 years was competent to adjudicate and decide an appeal under Section 9 of the Act or not, on the count that while exercising powers under Article 226 of the Constitution of India, it shall not be appropriate to restore an order otherwise illegal on the count that the authority passing the order was not having jurisdiction.

As a result, this petition for writ is dismissed.

(GOVIND MATHUR)J.

Anil/